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## INTERSTATE COMMERCE COMMISSION

RAILROAD EQUIPMENT LEASE

THIS AGREEMENT dated as of this 24 day of November, 1976, by and between AMERICAN REFRIGERATOR TRANSIT COMPANY, a New Jersey corporation, hereinafter called "Lessor," and DONIPHAN, KENSETT & SEARCY RAILWAY, an Arkansas corporation, hereinafter called "Lessee",

WHEREAS, Lessor has leased 65 - 52 foot 5 inch 70-ton insulated railroad box cars from General Foods Corporation, said General Foods lease being hereinafter referred to as Base Lease, and

WHEREAS, Lessee desires to sublease said cars from Lessor, to which Lessor is agreeable upon the terms and conditions stated herein;

NOW THEREFORE, in consideration of the rentals reserved and their mutual promises and agreements, it is hereby agreed:

1. Lease; Term.

(a) Lease. Lessor hereby leases to Lessee and Lessee hereby leases from Lessor, upon the terms and conditions herein set forth, the railroad cars described in the Schedule attached hereto, hereinafter collectively referred to as "Cars" and individually referred to as the "car", and to pay Lessor during the term of this Lease the rent set forth in Paragraph 5 of this Lease.

This Lease shall not become effective unless and until Lessee shall have in effect a leasing tariff authorizing same.

(b) Term. The term of this Lease shall commence on November 8, 1976, the effective date of said leasing tariff, and shall terminate on August 31, 1984, unless sooner terminated in accordance with its terms or by termination of the Base Lease or unless extended pursuant to written agreement between the parties.

2. Delivery. Lessee acknowledges receipt upon November 8, 1976, of the 65 cars shown in the Schedule in good condition.

3. Use and Possession. During the term of this Lease, Lessee shall be entitled to possession of each car from the date the Lease becomes effective as to each car and may use the Cars upon the lines of any railroad or other person, firm or corporation in the usual interchange of traffic but at all times subject to the terms and conditions of this Lease; provided, however, that at all times the Cars shall be used only in the United States of America or in Canada.

4. Taxes. Lessor shall be liable for and shall pay and reimburse any payment of: (a) all Federal, State or local sales or use taxes imposed upon or in connection with the Cars of this Lease; and (b) all taxes, duties or imports assessed or levied on the Cars or this Lease by a foreign country or a governmental subdivision thereof. Lessee shall pay: (a) all Federal, State or other governmental property taxes assessed or levied against the Cars during the term of this Lease; and (b) file all returns and reports in connection therewith. Lessor shall reimburse Lessee for all such taxes paid.

5. Rent; Transportation Costs.

(a) Rent. Lessee agrees to pay Lessor as rent all time-mileage revenue earnings received for the use of said Cars during the term of this Lease. It is understood and agreed that per car hire charges shall not accrue while said Cars are on the lines of Lessee.

(b) Transportation Costs. Lessor agrees to reimburse Lessee for any transportation costs incurred by Lessee for the movement of cars including but not limited to, switching charges, freight charges and demurrage or storage charges.

6. Maintenance and Repairs.

(a) Maintenance. Lessee, during the term of this Lease, promptly and with due diligence, shall keep and maintain the Cars and the interior lading equipment, special interior linings or removable parts, and provide such repair work or other work or materials as is necessary to maintain the same, in good working order and repair (ordinary wear and tear excepted) and make all replacements, changes or additions to the Cars or their equipment and appliances to the extent necessary or required from time to time:

(a) by the Interchange Rules; and (b) by applicable laws and regulations of any state or governmental body, including specifically but not exclusively, the Interstate Commerce Commission. Lessor agrees to pay Lessee the amounts and at the rates specified in the Interchange Rules for the maintenance and repair of the Cars on the same basis as though Lessor were the "owner", as such term is used in the Interchange Rules. In the case of a car requiring other than running repairs, Lessee shall advise Lessor the date such car is damaged or made empty and the date it releases from a shop. Maintenance may also be performed on a contract basis if more advantageous to Lessor. Lessee shall bill Lessor for all such amounts, specifying the number of the car repaired and the amount. Lessee shall provide underlying detail of repairs as requested. Lessee shall deal with railroads for the account of Lessor in all matters relating to the maintenance, repair or destruction of the Cars, and credit Lessor with all amounts collected.

(b) Loss, Theft or Destruction of Cars. In the event any car is lost, stolen, destroyed or, in the judgment of Lessee, damaged beyond economic repair, Lessee shall, by notice, promptly and fully advise Lessor of such occurrence. Lessee shall pay to Lessor the AAR depreciated value settlement made by Lessee with the railroad responsible for its destruction and from

which Lessee has collected the settlement. It is understood that Lessee shall be required to make such payment to Lessor only after Lessee has collected settlement from the responsible railroad, and Lessee agrees to use its best efforts to collect such settlement.

(c) Replacement. Lessor may, at any time and from time to time, replace any car which has been lost, stolen, destroyed or damaged beyond economic repair, with Replacement Cars and such Replacement Cars shall be deemed to be subject to all terms and conditions of this Lease as if the same had been originally delivered to Lessee at the time and in the place of Cars for which they are substituted. The parties shall execute amendments to this Lease and such other or further documents as may be required by either party hereto to evidence the withdrawal from and termination of this Lease with respect to Cars which have been lost, stolen, destroyed or damaged, or to include any Replacement Cars within the terms and provisions of this Lease.

7. Liens. Lessee shall keep the Cars free from any encumbrances or liens which may be a cloud upon or otherwise affect Lessor's interest in the Cars, or which arise out of any suit involving Lessee, or any act, omission or failure of Lessee or Lessee's failure to comply with the provisions of this Lease, and shall promptly discharge any such lien, encumbrance or legal process.

8. Marking. At, or prior to, the time of delivery of each of the cars, both sides of each car shall be distinctly, permanently and conspicuously marked by stenciling or by a metal plate affixed thereto, with reporting marks and numbers and with such other not-inconsistent marks as may be necessary to identify the underlying owner and Lessor during the term of this Lease. Lessee shall promptly replace any such marking which may be removed, destroyed or rendered illegible in whole or in part. Except for

numbering and stenciling as provided herein, Lessee shall keep the Cars free from any marking or labeling which might be interpreted as a claim of ownership by Lessee and will not change, or permit to be changed, the identifying road numbers on any of the cars; provided, however, that the Cars may be lettered or marked in an appropriate manner for convenience of identification of the interest of Lessee or to indicate the nature of the service furnished thereby.

9. Inspection; Inventory. During the term of this Lease, Lessor, or a party designated by Lessor, shall have the right, at Lessor's own cost and expense, to inspect the Cars at any reasonable time or times wherever the Cars may be. Lessee shall, upon request of Lessor, but no more than once every year, furnish to Lessor two (2) copies of an accurate inventory of all Cars subject to this Lease.

10. Return of Cars. Upon the expiration or termination of this Lease, Lessee agrees to return the Cars, at the expense of Lessor, to the original point of delivery or to any other point designated by Lessor. The Cars shall be so returned free of all liens and charges, except as otherwise herein provided, and in the same or as good condition, order and repair as when delivered to Lessee, ordinary wear and tear excepted, and with all the same type and character of devices, appliances or appurtenances with which the Cars were equipped at time of delivery to Lessee. However, the preceding sentence shall not be binding upon Lessee for any car which has been destroyed or damaged beyond economic repair, as previously provided herein, or which has been modified by agreement of the parties, during the term of this Lease.

11. Termination. Lessor may terminate this Lease at any time by delivery of twenty-five (25) days prior written notice to Lessee. If, in the judgment of Lessee, in good faith and reasonably exercised, it should

become necessary to amend or terminate this Lease in order to comply with any legal requirement, including specifically any rule, regulation or order of a court or regulatory agency, Lessee shall give written notice thereof to Lessor. If, in Lessee's judgment, amendment of this Lease would accomplish compliance with such legal requirement, rule, regulation or order of a court or regulatory agency, Lessee's notice shall specify the necessary amendment and Lessor shall have the option to accept such amendment or terminate this Lease and shall notify Lessee of such choice within thirty (30) days after Lessor's receipt of Lessee's notice. If Lessor elects to terminate this Lease, or if Lessee's initial notice specifies termination as the only method of compliance with such legal requirement, rule, regulation or order of a court or regulatory agency, such termination shall be effective thirty (30) days after the receipt of the applicable notice.

12. Recording. The parties hereto will cause this Lease and all amendments, or supplements, thereto to be duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written.

DONIPHAN, KENSETT & SEARCY RAILWAY

By J. L. Manion  
Vice President-Administration

ATTEST:

By H. J. Herold  
Asst. Secretary

AMERICAN REFRIGERATOR TRANSIT COMPANY

By Robert G. Dunne  
President and General Manager

ATTEST:

By H. J. Herold  
Asst. Secretary

STATE OF MISSOURI    )  
                              : SS  
CITY OF ST. LOUIS    )

On this *10th* day of November, 1976, before me personally appeared Robert J. Dunne, Jr., to me personally known, who, being by me duly sworn, says that he is the President and General Manager of American Refrigerator Transit Company, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.


  
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Notary Public

My Commission Expires: January 28, 1978

Commissioned within and for the County of St. Louis,  
Missouri, which adjoins the City of St. Louis, Missouri,  
where this act was performed.

STATE OF MISSOURI     )  
                              : SS  
CITY OF ST. LOUIS     )

On this *10th* day of November, 1976, before me personally appeared D. L. Manion, to me personally known, who, being by me duly sworn, says that he is Vice President-Administration of Doniphan, Kensett & Searcy Railway, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
Notary Public

Commissioned within and for the County of St. Louis,  
Missouri, which includes the City of St. Louis, Missouri,  
where this act was performed.

My Commission Expires: January 28, 1978



AMERICAN REFRIGERATOR TRANSIT COMPANY, LESSOR  
DONIPHAN, KENSETT & SEARCY RAILWAY, LESSEE

SCHEDULE

<u>CARS</u>	<u>DESCRIPTION</u>	<u>LESSEE'S MARKS</u>
65	52'5" I.L., 70 Ton, RBL Cars	DKS 776177-776241